

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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MAR 11 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**In the Matter of

Federal-State Joint Board on
Universal Service**

DOCKET FILE COPY ORIGINAL CC Docket No. 96-45

**FORMAL REQUEST FOR REFERRAL OF DESIGNATED ITEMS BY
THE STATE MEMBERS OF THE
§ 254 FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE**

Pursuant to § 1.49 of the Federal Communications Commission's ("Commission" or "FCC") Rules of Practice and Procedure, 47 C.F.R. § 1.49 (1997), and Sections 410(c) and 254, 47 U.S.C.A. §§ 410(c), 254 (1996), the four State Members of the Federal-State Universal Service Joint Board ("State Members")¹ respectfully request that the FCC refer the following issues to the Joint Board for a recommended decision:

- Whether the FCC should only take responsibility for 25% of the high cost subsidy calculated by the new soon-to-be adopted federal funding model and leave the remaining 75% shortfall for States to support;
- Whether to apply federal universal funds to reduce the cost of interstate access charges;
- An appropriate method for formulating and distributing High Cost Funds among the States; and
- Whether and to what extent the FCC should have a role in making intrastate support systems explicit, and, as part and parcel of any such examination, a referral of the § 254(k) issue concerning the recovery of joint and common costs.

In support of this request we state as follows:

¹ The Honorable Julia Johnson, Chair of the Florida Public Service Commission, the Honorable Laska Schoenfelder, Commissioner with the South Dakota Public Utilities Commission, the Honorable David Baker, Commissioner with the Georgia Public Service Commission, and the Honorable Martha Hogarty, Public Counsel, State of Missouri.

I. Introduction

On November 5, 1996, the Federal-State Universal Service Joint Board issued a *Recommended Decision* on how the Act's universal service provisions should be implemented.² This decision was the result of thousands of hours of analysis, discussion, and deliberation among the State and Federal Joint Board commissioners and staff. The Commission used the Recommended Decision as the basis for many of its final determinations in the May 8, 1997 Universal Service Order.³

State Members generally believe the Commission should be commended for its efforts to implement the universal service provisions of the '96 Act. Facing a host of complicated and controversial issues and operating under very tight time constraints, the FCC has already implemented extensive changes to traditional policy. As Congress anticipated, these changes were necessary to adjust the regulatory paradigm to the introduction of competition into the local telephone service market facilitated by other parts of the Act.

That the Commission adopted many of the Joint Board's recommendations in its Universal Service Order supports our belief that many of those policy determinations are consistent with the plain language of the 1996 Act. However, we remain very concerned about several extremely important and critical proposed changes to how the federal program will be structured and funds distributed that surfaced only recently. *Significantly, none of the listed items was referred to the Joint Board, raised among the Federal and State Joint Board members during their deliberations, or addressed by the Joint Board's recommendation. All four items also have deep and significant impacts upon State regulatory policies and intrastate rates.*⁴

² *Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 87 (1996).

³ *Report and Order, In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, 62 Fed. Reg. 32,862 (June 17, 1997).

⁴ State Members did not receive notice or consultation on the 25-75% proposal or the suggestion to divert high cost funds to reduce the cost of interstate access until after the recommendation issued. Counsel's "LEXIS" search also failed to uncover any public mention of those proposals prior to that time. Moreover, at least one of the distribution proposals the FCC may be considering was not in existence until after the Joint Board's decisions were formulated.

Because we believe Congress expected the FCC to have the benefit of a Joint Board recommendation on all major policy considerations essential to the federal program, the members of the Joint Board nominated by the National Association of Regulatory Utility Commissioners and the National Association of State Utility Consumer Advocates have joined to formally renew previous informal requests that the FCC make the referrals listed above.

II. Discussion of Referral Request

A. **A Joint Board Recommendation on these issues is not only required by the legislation, but that recommendation will also forestall post-decisional litigation.**

Congress, in § 254 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act" or "'96 Act"), required the FCC to immediately refer to this Federal-State Joint Board a proceeding to recommend changes "...to any of its regulations in order to implement Sections 214(e) and this section, including the definition of services that are supported." *{Emphasis added.}* Moreover Congress made clear that that first referral was not the end of Joint Board involvement. In the very next paragraph, they again required the FCC to complete *any* proceedings to implement *subsequent recommendations* from any Joint Board on universal service within one year after receiving such recommendations. 47 U.S.C. § 254(a)(2)(1996). Later in §254, in another reference to the continuing status of this Joint Board, Congress stated that "the Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal Universal service support mechanisms." 47 U.S.C. § 254(c) (2) (1996).⁵

The language of the Act, in several places, demonstrates that Congress intended the major policy initiatives coming out of this proceeding to be based upon the recommendation of the Joint Board. Unfortunately, as discussed earlier, none of the listed items were considered by the board.

⁵ Indeed, because Board members are appointed pursuant to 47 U.S.C.A. §410(c) (1994), State members *must* be afforded an opportunity to (1) "sit with the Commission *en banc* at any oral argument that may be scheduled in the proceeding" and (2) "to participate in its deliberations. . .when it has under consideration he recommended decision of the Joint Board or any further decisional action that may be required in the proceeding."

We believe that Congress's intent is obvious. While the Commission is not bound by the Joint Board recommendations, Congress obviously wanted the FCC's major policy determinations in this docket, to be reviewed by the Joint Board - a composite fact-finding and decisional body that derives its record-based recommendations from a unique balance of federal and State regulatory and State Consumer Advocate expertise. All four of the listed issues will have a significant and direct impact on State policy. Indeed, nothing is more central to the universal service plan than the rulings raised *after* the Joint Board took action. The amount of funding, placing new funding requirements on the intrastate jurisdiction, changing the historical focus of the fund from reducing the costs of local service in high cost areas to reducing interstate access charges - all these questions go to the very heart of the universal service program.

The Act clearly contemplates Joint Board recommendations on all major universal service policy issues in advance of any final Commission action. If some interested party is unhappy with the FCC's final determinations, they may well argue, successfully, to the Courts that the FCC, in not getting the Joint Board's recommendation, failed to comply with the Act. This additional litigation could further disrupt Federal and State efforts to implement the Act.

Moreover, by failing to refer the issue to the Joint Board, the FCC risks implementing policies on joint and common cost allocation that may be inconsistent or incompatible with the universal service policies and goals previously recommended by the Joint Board.

B. Referral to the Joint Board is Timely.

The FCC has noted both the need and the desirability of a continuing and formal role for the Joint Board, as opposed to just the State members of the Joint Board. Several times in its May 8, 1997 order, the Commission discusses its plans formally to seek additional Joint Board input. For example, in ¶ 202, the FCC notes, with respect to the "intrastate implicit subsidy" questions "[w]e recognize, however, that we will need to continue to consult with the states as they undertake this process. *We will reconvene the Joint Board* later this year to provide a working forum for such consultations." Again in ¶ 750, in an apparent reference to the idea of using USF funds to reduce access charges, the FCC notes "[w]e take other, related steps in the companion access charge reform docket, and expect to revisit issues related to loop cost recovery *in light of further recommendations* from the Joint Board in this proceeding."

State Member informal discussions with their FCC counterparts over the last year have mentioned on numerous occasions the acknowledged need for additional formal referrals and Joint Board recommendations. Unfortunately, the impending changes in FCC members to the Board during 1997 made a formal request impractical until now. State members understand the reluctance of the former Chairman to initiate additional Joint Board proceedings when two of the sitting FCC members to the Joint Board would most certainly leave before a recommendation could be generated. Similarly, we understand the additional delay in taking formal action caused by the replacement of four of the five FCC commissioners late last year.

However, the appointments, announced at the beginning of February of this year, of Commissioners Harold Furchtgott-Roth and Gloria Tristani to replace the vacancies left by former FCC Commissioners Hundt and Chong, removed the last impediments to a formal referral. We believe that the FCC should now act as quickly as possible to formally refer items as promised in its May 8, 1998 order. We believe it is critical that that referral include the four items listed earlier.

C. Rapid issuance of the Request for a Referral will help inform and expedite full and final FCC action on these issues.

The FCC has clearly stated its intention, in accordance with the intent of Congress, to have formal Joint Board recommendations on several core issues critical to the implementation of the universal service program. The State members believe the four items listed above should be part of any referral order because (1) they are integral parts of any final federal Universal Service Program, and (2) they will have an enormous impact on both existing and planned State rates and intrastate universal service initiatives.

Almost a year has lapsed since the FCC made these statements recognizing the need for further formal input from the board. The reasons for delaying additional formal proceedings, pending the anticipated replacements of four of the five sitting FCC Commissioners, were obvious and understandable.


However, we are rapidly reaching a critical stage of the implementation effort. We believe not only that a Joint Board Recommendation on these issues is what Congress intended and currently desires, but also that such a recommendation will help bring to closure many of the issues associated with each of the four listed items.

III. Conclusion

The Commission's interpretations implementing many subparts of the universal service provisions of the Act were consistent with the Congressional intent and the statutory language. State Members support those decisions. However, as discussed above, Congress did intend for FCC action on the major policy initiatives in this proceeding to be informed by a Joint Board recommendation. For the foregoing reasons, we respectfully request formal referral of the four items listed above.

Respectfully Submitted,


State Members of the §254 Federal State Joint Board



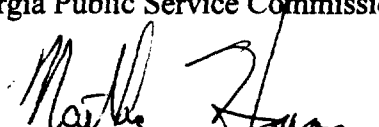
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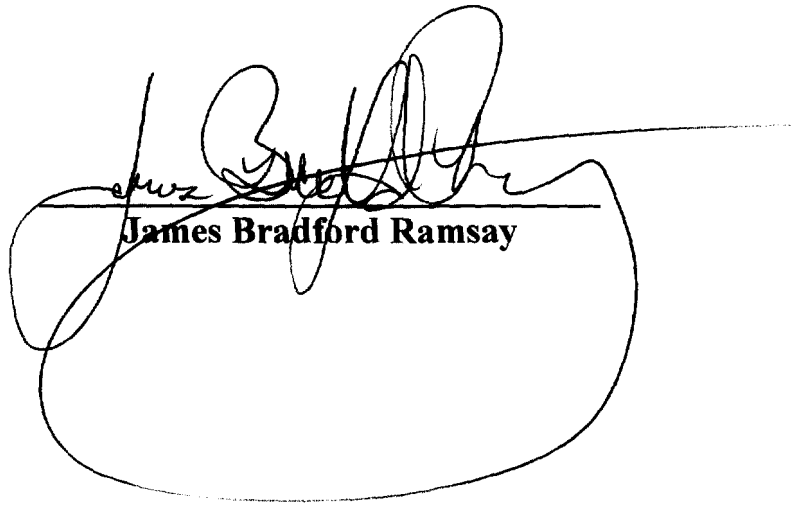


The Honorable Martha Hogerty
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March 11, 1998

CERTIFICATE OF SERVICE

I, James Bradford Ramsay, certify that a copy of the foregoing was served on the persons on the attached service list by first class mail postage prepaid this 11th day of March, 1998.



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